Cortlandt St. Recovery Corp. v TPG Capital Mgt., L.P.
2021 NY Slip Op 30893(U)
March 22, 2021
Supreme Court, New York County
Docket Number: 651176/2017
Judge: Carol R. Edmead
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD **PART** IAS MOTION 43EFM

Justice

----------X

CORTLANDT STREET RECOVERY CORP.,

Plaintiff,

- v -

TPG CAPITAL MANAGEMENT, L.P., APAX PARTNERS LLP, DAVID BONDERMAN, JAMES COULTER, TPG GENPAR IV, L.P., TPG PARTNERS IV, L.P., TPG ADVISORS IV, INC.,T3 GENPAR II, L.P., T3 PARTNERS II, L.P., T3 PARALLEL II, L.P., APAX EUROPE VI GP, L.P., APAX PARTNERS EUROPE MANAGERS LTD., APAX WW NOMINEES LTD., APAX PARTNERS, L.P., APAX EUROPE VI-A, L.P., APAX EUROPE VI-I, L.P., APAX EUROPE VI GP CO. LTD.,

Defendant.

----------X

INDEX NO. 651176/2017

MOTION DATE 12/01/2020, 12/02/2020, 12/02/2020, 12/07/2020

MOTION SEQ. NO. 005 006 007 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 176, 181, 182, 183, 185, 198, 199, 200, 202

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 160, 161, 177, 186, 201, 203

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 162, 163, 164, 165, 166, 178, 184, 188, 189, 190, 195, 196, 197, 204

were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 167, 168, 169, 170, 171, 172, 173, 174, 179, 187, 191, 192, 193, 194, 205

were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, it is

MEMORANDUM DECISION

Motion sequence numbers 005, 006, 007, and 008 are consolidated for disposition.

Plaintiff Cortlandt Street Recovery Corporation (Cortlandt) brings this action, as assignee, to recover amounts due under Subordinated Floating Rate Notes due 2015 (the Sub Notes) issued by Hellas Telecommunications II (Hellas II).

Defendants David Bonderman (Bonderman) and James Coulter (Coulter) move, pursuant to CPLR 2221 (d), for leave to reargue the court's decision and order dated October 22, 2020 (the prior decision) (motion sequence number 005).

Proposed intervenor Basil Vasiliou (Vasiliou) moves, pursuant to CPLR 2221 (d), for leave to reargue and renew the prior decision (motion sequence number 006).

Cortlandt also moves, pursuant to CPLR 2221 (d), for leave to reargue the prior decision. Alternatively, Cortlandt seeks leave, pursuant to CPLR 3025 (b), to amend the complaint (motion sequence number 007).

Vasiliou again moves for clarification of the court's prior decision (motion sequence number 008).

BACKGROUND

Familiarity with the court's prior decision is presumed. Briefly, Cortlandt alleges that TPG Capital, L.P. and Apax Partners LLP orchestrated a €1 billion "bleed-out" of their alter ego, Hellas II, for the sole purpose of paying dividends to themselves. According to Cortlandt, defendants improperly redeemed convertible preferred equity certificates (CPECs), leaving Hellas II unable to repay the Sub Notes. Cortlandt also seeks to hold their affiliates and their principals, Bonderman and Coulter, responsible for this fraudulent scheme as alter egos of Hellas II.

In the prior decision, the court, among other things: (1) held that Cortlandt was collaterally estopped from relitigating the issue of personal jurisdiction over the European defendants[1] based upon the Bankruptcy Court for the Southern District of New York's determination that it had lacked personal jurisdiction over them (*see In re Hellas Telecom. (Luxembourg) II SCA*, 524 BR 488 [Bankr SD NY 2015]; (2) held that Cortlandt had made a sufficient start to warrant jurisdictional discovery as to Bonderman and Coulter under the theory that they were bound by the forum selection clause in the indenture either as alter egos of Hellas II or under the "closely related" doctrine; (3) with respect to the defendants that did not contest personal jurisdiction, held that because Cortlandt failed to plead compliance with the no-action clause, all of its claims with the exception of its breach of contract and fraud claims were barred; (4) held that the fraud claim failed to state a cause of action; (5) held that the breach of contract and alter ego liability claims failed because Cortlandt failed to plead compliance with the no-action clause; (6) dismissed the putative class claims as untimely; and (7) denied Vasiliou's intervention motion as unwarranted in light of the fact that the putative breach of contract claims were time-barred (*Cortlandt St. Recovery Corp. v TPG Capital Mgt., L.P.*, 2020 NY Slip Op 33491[U] [Sup Ct, NY County 2020]).

DISCUSSION

A motion for leave to reargue, addressed to the sound discretion of the court, may be granted upon a showing that the court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law (CPLR 2221 [d] [2]; *Frenchman v Lynch*, 97 AD3d 632, 633 [2d Dept 2012]; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept

[1] The European defendants are Apax Partners LLP, Apax Europe VI GP Co., Ltd., Apax Europe VI GP, L.P., Apax Partners Europe Managers Ltd., Apax Europe VI- A L.P., Apax Europe VI-1, L.P., and Apax WW Nominees, Ltd.

1992], *lv dismissed in part and denied in part* 80 NY2d 1005 [1992], *rearg denied* 81 NY2d 782 [1993]; *Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]). Reargument is "not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" (*McGill v Goldman*, 261 AD2d 593, 594 [2d Dept 1999]; *see also Levi v Utica First Ins. Co.*, 12 AD3d 256, 258 [1st Dept 2004]).

A motion for leave to renew a prior motion must be based upon "new facts not offered on the prior motion that would change the prior determination" or must show that "there has been a change in the law that would change the prior determination" (CPLR 2221[e][2]; *see also Melcher v Apollo Med. Fund Mgt. L.L.C.*, 105 AD3d 15, 23 [1st Dept 2013]; *Matter of Katz*, 63 AD3d 836, 837-838 [2d Dept 2009]). Furthermore, the papers must "contain [a] reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221 [e][3]). "A clarification of the decisional law is a sufficient change in the law to support renewal" (*Dinallo v DAL Elec.*, 60 AD3d 620, 621 [2d Dept 2009]).

CPLR 2221(f) states that "[a] combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought. The court, in determining a combined motion for leave to reargue and leave to renew, shall decide each part of the motion as if it were separately made."

I. The Branch of Cortlandt's Motion Seeking Leave to Reargue (Motion Sequence Number 007)

A. Breach of Contract

Cortlandt argues that the court improperly dismissed the breach of contract claim for failure to comply with the no-action clause. Cortlandt contends that it is the law of the case that "holder" status is an issue of standing, not of compliance with the no-action clause. Even if the

issue could be framed as a failure to comply with the no-action clause, the issue was not properly raised in defendants' moving brief. Therefore, Cortlandt maintains that the court should not have considered defendants' arguments concerning its authorization to sue made in reply.

In opposition, defendants contend that a plaintiff's failure to plead compliance with an indenture's no-action clause is a contractual bar to suit and a lack of standing to sue. Additionally, defendants maintain that they sufficiently raised the issue in their moving brief. According to defendants, Cortlandt does not dispute that it saw the footnote raising the issue and could have responded to the footnote if it wished.

Here, Cortlandt has failed to demonstrate that the court misapprehended or overlooked the facts or the law. The court considered the arguments and the relevant law in rendering the prior decision. Accordingly, the branch of Cortlandt's motion for leave to reargue the breach of contract claim is denied.

Even if the court were to reach the issue, defendants adequately raised Cortlandt's failure to comply with the no-action clause/lack of standing argument in their moving papers, even though it was raised in a footnote (NY St Cts Elec Filing [NYSCEF] Doc No. 67 at 5 n 4). In any case, defendants properly responded in their reply to Cortlandt's argument that an individual "holder" could assert a breach of contract claim under section 6.07 of the indenture (*see Sanford v 27-29 W. 181st St. Assn.*, 300 AD2d 250, 251 [1st Dept 2002]). Case law holds that a plaintiff's failure to plead compliance with the indenture's no-action clause is a contractual bar to suit and a lack of standing (*see e.g. Rimrock High Income Plus (Master) Fund, Ltd. v Avanti Communications Group PLC*, 157 AD3d 543, 543 [1st Dept 2018]). Moreover, Cortlandt does not claim that it adequately alleged holder status or standing to sue in the complaint or that it

submitted evidence to remedy the deficiency. Thus, the breach of contract claim was properly dismissed for failure to comply with the no-action clause.

B. European Defendants

Cortlandt also seeks leave to reargue the portion of the prior decision that precluded Cortlandt from arguing that the European defendants are subject to personal jurisdiction based upon the collateral estoppel doctrine. According to Cortlandt, the court overlooked that the case law on which it relied only applied to substantive claims arising out of the same transaction or series of transactions, and not to the issue of personal jurisdiction. Cortlandt further argues, relying on federal district court cases, that the jurisdictional issue in the Bankruptcy Court proceeding and the instant action are not identical. The Liquidators sought to prove jurisdiction in the Bankruptcy Court based upon the defendants' presence in New York, while Cortlandt now seeks to prove personal jurisdiction against defendants as alter egos of Hellas II based upon Hellas II's consent to jurisdiction in the forum selection clause of the indenture.

For their part, defendants argue that Cortlandt seeks another opportunity to argue an issue previously decided. In addition, defendants argue that a new theory or cause of action cannot defeat the application of collateral estoppel. Defendants point out that both cases arise out of the issuance of the Sub Notes and asserted similar causes of action and asserted similar theories of jurisdiction.

In reply, Cortlandt argues that "the facts underlying the Liquidators' claim to jurisdiction in the Bankruptcy Action – namely, the Defendants' presence in the jurisdiction – are, by any measure, substantially different from the facts underlying Cortlandt's claim to jurisdiction here –

namely, Defendants' status as alter egos of Hellas II, which consented to jurisdiction in New York in the forum selection clause of the Indenture" (NYSCEF Doc No. 195 at 8).

In this case, Cortlandt has failed to demonstrate that the court misapprehended the facts or misapplied the law. The court considered the parties' arguments and case law concerning whether Cortlandt was collaterally estopped from relitigating the issue of personal jurisdiction over the European defendants.

Even assuming that reargument is warranted, the court would adhere to its original determination. Collateral estoppel requires: (1) that the identical issue was necessarily decided in the prior proceeding and is decisive of the present action, and (2) that there was a full and fair opportunity to contest that issue in the prior proceeding (*D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659, 664 [1990]). Collateral estoppel requires analysis of "fairness to the parties, conservation of the resources of the court and the litigants, and the societal interests in consistent and accurate results" (*Buechel v Bain*, 97 NY2d 295, 304 [2001], *cert denied* 535 US 1096 [2002]).

First, as indicated in the prior decision, the issue of personal jurisdiction over the European defendants was previously determined by the Bankruptcy Court. Therefore, the issue may not be relitigated under the doctrine of collateral estoppel, as articulated by First Department and other Appellate Division cases[2] (*see DirecTV Latin Am., LLC v Pratola*, 94 AD3d 628, 628 [1st Dept 2012], *lv denied* 19 NY3d 812 [2012]; *Keeler v West Mtn. Corp.*, 105 AD2d 953, 954-955 [3d Dept 1984]), notwithstanding that Cortlandt asserts different causes of action and seeks to assert personal jurisdiction over the European defendants based upon a different theory, i.e., an alter ego theory of jurisdiction (*see Corvetti v Town of Lake Pleasant*,

[2] The parties mostly relied on New York cases on the motion to dismiss.

146 AD3d 1118, 1121 [3d Dept 2017]; *Thomas v City of New York*, 239 AD2d 180, 180 [1st Dept 1997]).

Second, even under the standard iterated by federal district courts now relied upon by Cortlandt, it has failed to offer "new material facts that could not have been previously discovered in the exercise of reasonable diligence" or "a new cause of action that provides a different basis for personal jurisdiction" (*Krepps v Reiner*, 588 F Supp 2d 471, 478 [SD NY 2008], *affd* 377 Fed Appx 65 [2d Cir 2010] [internal quotation marks and citation omitted]). Both cases involve the same underlying transactions, and both complaints asserted fraudulent conveyance and unjust enrichment claims. It is undisputed that both actions arose out of the issuance of the Sub Notes and defendants' alleged fraudulent transfer of proceeds to themselves. Thus, the claims do not raise a different basis for personal jurisdiction (*see Moscato v MDM Group, Inc.*, 2008 WL 2971674, *4, 2008 US Dist LEXIS 58030, *13-*14 [SD NY, July 8, 2008, No. 05 Civ. 10313, Wood, J.] [holding that claims based on the same underlying transactions did not raise a different basis for personal jurisdiction]; *accord Warren v Cardoza Pub. Co.*, 2017 WL 496066, *4, 2017 US Dist LEXIS 16128, *13 [ED Mo, Feb. 6, 2017, No. 4:16CV572, White, J.]). And, Cortlandt does not argue that any facts are new, or that it or the Liquidators could not have discovered these facts using reasonable diligence. Therefore, Cortlandt has failed to demonstrate that the Liquidators could not have presented these facts to the Bankruptcy Court (*see Moscato*, 2008 WL 2971674, *4, 2008 US Dist LEXIS 58030, *13).

Third, the underlying purpose of collateral estoppel -- to "prevent[ ] repetitious litigation of disputes which are essentially the same" (*D'Arata*, 76 NY2d at 666) -- also supports application of the doctrine.

Accordingly, the branch of Cortlandt's motion seeking leave to reargue is denied.

II. Bonderman and Coulter's Motion for Leave to Reargue (Motion Sequence Number 005)

Bonderman and Coulter argue that the court should modify the decision to include them in the dismissal because the court dismissed all causes of action. Additionally, Bonderman and Coulter maintain that the court overlooked or misapprehended their jurisdictional arguments, and overlooked their affidavits submitted in support of their motion.

Cortlandt counters that the court improperly dismissed the breach of contract claims for failure to comply with the no-action clause, as noted above. Cortlandt also contends that the court did not overlook the status of discovery – at the time that Cortlandt filed its opposition, no discovery had been taken in this action. Further, the individual defendants' allegations are insufficient to trump the alter ego allegations of the complaint.

Here, Bonderman and Coulter have failed to demonstrate that the court misapprehended the facts or misapplied the law. The court considered the arguments and affidavits on their motion to dismiss for lack of personal jurisdiction.

Even if the court were to reach the merits, the court would adhere to its prior determination.

Bonderman and Coulter argue that the court overlooked the fact that they joined in the other arguments in support of dismissal of the complaint. However, First Department precedent indicates that where personal jurisdiction is lacking, the court is without power to issue binding rulings in favor of that defendant (*see e.g. Flame S.A. v Worldlink Intl. (Holding) Ltd.*, 107 AD3d 436, 437 [1st Dept 2013], *lv denied* 22 NY3d 805 [2013] [holding that motion court "should have addressed the issue of personal jurisdiction before forum non conveniens because, if a court lacks jurisdiction over a defendant, it is 'without power to issue a binding forum non conveniens

ruling as to' that defendant"] [citation omitted]; *Gomez v City of New York*, 49 AD3d 473, 473 [1st Dept 2008] ["(b)ecause plaintiff never served (defendant) after having received leave of the court to do so, the court never obtained personal jurisdiction over (defendant), and thus, it was without power to grant relief nunc pro tunc"] [citation omitted]; *Wyser-Pratte Mgt. Co., Inc. v Babcock Borsig AG*, 23 AD3d 269, 269 [1st Dept 2005] [holding that "motion court incorrectly dismissed the complaint as against defendants . . . on forum non conveniens grounds without first adjudicating their jurisdictional defenses;" "considering the defenses of those defendants in the proper sequence discloses that the court had no jurisdiction over (defendants) and, accordingly, was without power to issue a binding forum non conveniens ruling as to them"] [citations omitted]). Thus, the court was without power to dismiss the complaint for failure to state a cause of action against Bonderman and Coulter, prior to resolution of the question of whether the court had jurisdiction over them.

Moreover, the court did not overlook the status of discovery at the time the motion to dismiss was made. As pointed out by Cortlandt, no discovery had been taken in this action at the time that Cortlandt's opposition papers were filed. Indeed, Cortlandt's memorandum of law in opposition noted that "Plaintiff has had no discovery . . ." (NYSCEF Doc No. 80 at 11). On a pre-discovery motion to dismiss for lack of personal jurisdiction, the standard was whether Cortlandt had set forth "a sufficient start, and [had] shown [its] position not to be frivolous" (*Peterson v Spartan Indus.*, 33 NY2d 463, 467 [1974]). In exercising its discretion, the court noted that discovery was "desirable, indeed may be essential, and should quite possibly lead to a more accurate judgment than one made solely on the basis of inconclusive preliminary affidavits" (*id.*). Cortlandt made a sufficient start, based upon the indenture and the complaint's allegations of domination and control and that Bonderman and Coulter were closely related to

Hellas II. Notably, Bonderman and Coulter have not moved to renew based upon completion of jurisdictional (or any) discovery.

Accordingly, Bonderman and Coulter's motion is denied.

III. Vasiliou's Motion for Leave to Reargue and Renew (Motion Sequence Number 006)

Vasiliou argues that the court should grant leave to renew his intervention motion based upon *CNH Diversified Opportunities Master Account, L.P. v Cleveland Unlimited, Inc.* (36 NY3d 1 [2020], *rearg denied* 36 NY3d 1043 [2021]). Vasiliou argues that *CNH* changed New York law such that the putative class contract claims should now be deemed timely. Further, Vasiliou maintains that the court should remove the TPG defendants and Apax Partners, L.P "from the dismissed portion of the decision" because they did not contest personal jurisdiction.

In response, defendants contend that: (1) *CNH* did not change the law concerning the statute of limitations; and (2) the court did not dismiss the TPG defendants and Apax Partners, L.P for lack of personal jurisdiction; rather, it dismissed the complaint against all defendants except for the European defendants, Bonderman, and Coulter for failure to comply with the no-action clause.

In this case, Vasiliou has failed to demonstrate that *CNH* represents a change or clarification of decisional law sufficient to support his motion to renew. As indicated above, the court denied his motion to intervene as untimely. In *CNH*, the Court of Appeals held that minority noteholders' purported cancellation of notes through strict foreclosure, did not extinguish minority noteholders' legal right to payment on the notes, as a matter of contract interpretation (*id.* at 19). *CNH* did not address the statute of limitations or the accrual of a breach

of contract claim. Moreover, *CNH* did not discuss timeliness in the context of an intervention motion.

Contrary to Vasiliou's contention, the court did not dismiss the TPG defendants or Apax Partners, L.P. for lack of personal jurisdiction. The court dismissed the complaint against all defendants except for the European defendants, Bonderman, and Coulter for failure to comply with the no-action clause.

Therefore, Vasiliou's first motion is denied.

IV. Vasiliou's Motion for Clarification (Motion Sequence Number 008)

Vasiliou also seeks clarification of the court's ruling on his motion to intervene. Vasiliou requests that the court make clear that it adopted defendants' argument that the proposed eleventh cause of action was not ripe. Vasiliou's proposed eleventh cause of action sought a declaration that, upon one or more defendants being found liable as alter egos of Hellas II, such defendants are liable for a judgment against Hellas II (NYSCEF Doc No. 104, ¶¶ 169-171).

In response, defendants contend that Vasiliou's motion is untimely and that clarification is unnecessary.

The CPLR does not provide for a "clarification" motion, and courts treat such a motion as one for reargument (*Bowen v Sherwood Sec. Corp.*, 189 AD2d 592, 593 [1st Dept 1993]). CPLR 2221 (d) (3) provides that a motion to reargue "shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry."

In this case, Vasiliou's motion must be denied as untimely. Vasiliou's motion was made on December 7, 2020, although notice of entry was served on November 2, 2020 (NYSCEF Doc

Nos. 142, 167). In any event, Vasiliou improperly advances arguments not previously made on his intervention motion (*see McGill*, 261 AD2d at 594). Defendants opposed Vasiliou's motion on the grounds that it was futile, since the putative breach of contract claims were untimely (NYSCEF Doc No. 109 at 6-8). In reply, Vasiliou did not offer any substantive response, but directed the court to defendants' motion to dismiss,[3] and stated that he only raised the proposed eleventh cause of action so that all claims could be tried together (NYSCEF Doc No. 123 at 6-7).

Even if the court were to entertain the motion, the court would only clarify that Vasiliou's motion was denied as untimely, given that the putative breach of contract claims are time-barred. Vasiliou may seek a declaration as to a hypothetical *future* judgment enforcement claim at the appropriate time, if so advised.

Therefore, Vasiliou's motion for clarification is denied.

V. The Branch of Cortlandt's Motion for Leave to Amend the Complaint (Motion Sequence Number 007)

Cortlandt moves, in the alternative, for leave to replead the complaint to assert two causes of action for breach of contract and fraud. Specifically, Cortlandt argues that these causes of action are not palpably insufficient, and that defendants cannot establish any prejudice.

In opposition, defendants contend that the motion should be denied because: (1) the proposed amended complaint fails to show the proposed changes or additions; (2) Cortlandt has had multiple pleading opportunities in multiple actions in different courts and should not be given another one; and (3) Cortlandt offers no reasonable excuse for the delay in moving to amend and defendants would be prejudiced by the amendment, because they would be required

[3] Cortlandt only argued that the putative breach of contract claims were timely.

to "litigate anew, including through discovery and additional motion practice, a case involving a transaction that occurred some 15 years ago" (NYSCEF Doc No. 184 at 16). In any event, defendants argue that leave to amend should be denied as to the European defendants.

"On a motion for leave to amend, plaintiff need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit" (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010] [citations omitted]; *accord Cruz v Brown*, 129 AD3d 455, 456 [1st Dept 2015]). "Mere delay is insufficient to defeat a motion for leave to amend" (*Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011]). "Prejudice requires some indication that the defendant has been hindered in the preparation of [its] case or been prevented from taking some measure in support of [its] position" (*id.*). Nevertheless, "[w]here there has been an extended delay in moving to amend, the party seeking leave to amend must establish a reasonable excuse for the delay" (*Oil Heat Inst. of Long Is. Ins. Trust v RMTS Assoc.*, 4 AD3d 290, 293 [1st Dept 2004] [internal quotation marks and citation omitted]).

Here, the proposed amendments are not palpably insufficient or clearly devoid of merit, except for the inclusion of the European defendants as defendants in the proposed amended complaint. The proposed fraud claim includes allegations that the offering memorandum falsely stated "that Defendants intended to use the proceeds of the offering of the Sub Notes to redeem deeply subordinated shareholder loans from the Sponsors" when in fact "Defendants always intended to use the proceeds of the Sub Notes to redeem the CPECs, which constitute equity, not debt, and which could not properly be redeemed by their own terms" (NYSCEF Doc No. 166, proposed amended complaint, ¶ 133 [a]). Furthermore, the proposed breach of contract claim

alleges that Euroclear Bank SA/NV and Clearstream International S.A., the registered holders of the Sub Notes, authorized the assignors to bring suit on the notes (*id.*, ¶¶ 14-27).

Next, Cortlandt's failure to comply with CPLR 3025 (b), which requires that the proposed amended pleading "clearly show[] the changes or additions to be made to the pleading," is a technical defect, which the court may overlook (*Berkeley Research Group, LLC v FTI Consulting, Inc.*, 157 AD3d 486, 490 [1st Dept 2018]; *see also* CPLR 2001). Cortlandt's memorandum of law highlighted the changes and additions to the proposed amended complaint. Although defendants argue that Cortlandt has had numerous pleading opportunities in multiple courts, that fact does not establish prejudice for purposes of the instant action, which was filed in 2017. Even if Cortlandt delayed in moving to amend in this action, defendants have failed to establish any prejudice. "Prejudice does not occur simply because a defendant is exposed to greater liability or because a defendant has to expend additional time preparing its case" (*Jacobson v McNeil Consumer & Specialty Pharms.*, 68 AD3d 652, 654 [1st Dept 2009]). "Moreover, the need for additional discovery does not constitute prejudice sufficient to justify denial of an amendment" (*id.*).

Therefore, Cortlandt's motion for leave to amend the complaint is granted, except the European defendants shall be excluded in the amended complaint.

CONCLUSION

Accordingly, it is

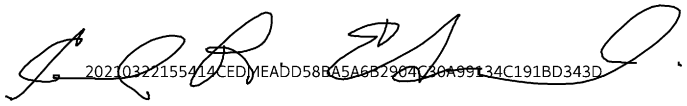
ORDERED that the motion (sequence number 005) of defendants David Bonderman and James Coulter for leave to reargue is denied; and it is further

ORDERED that the motion (sequence number 006) of proposed intervenor Basil Vasiliou for leave to renew and reargue is denied; and it is further

ORDERED that the branch of the motion (sequence number 007) of plaintiff Cortlandt Street Recovery Corp. for leave to reargue is denied; and it is further

ORDERED that the branch of the motion (sequence number 007) of plaintiff Cortlandt Street Recovery Corp. for leave to amend the complaint is granted, and plaintiff shall serve the amended complaint in the form annexed to the moving papers, except the European defendants shall be excluded as defendants, within 20 days of service of a copy of this decision and order with notice of entry; and it is further

ORDERED that the motion (sequence number 008) of proposed intervenor Basil Vasiliou for clarification is denied.



3/22/2021
DATE

CAROL R. EDMEAD

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE